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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,412	12/07/2001	Russel Shirley	AMDA.499C1 (TT4002/03C1)	6042

7590 05/12/2003

Attention of: Robert J. Crawford
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EXAMINER

RODRIGUEZ, PAUL L

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 05/12/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/010,412

Applicant(s)

SHIRLEY ET AL.

Examiner

Paul L Rodriguez

Art Unit

2125

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments that the '222 publication is not prior art, are not persuasive. Applicant argues that statute and rules mandate that the examiner provide any such provisional patent document relied upon. Examiner found no specific language in the cited statute and rule that used the language "provisional patent documents". Examiner did find direction of "...such information and references as may be useful in judging of the propriety of continuing the prosecution of his application..." ('132) and "...if printed publications are cited...place where a copy can be found, will be given" ('1.104). Examiner has provided applicant with the printed publication, information useful in judging (examiners response the request for evidence in the prior office action) and the place and how applicant may obtain a copy of the provisional document. Also, it should be known that when an application publishes, the file and provisional application become of public record. Examiners original rejection relying on the '222 reference was made in May 2002, which should have afforded applicant ample time to acquire a copy of the provisional document, therefore the rejection and its finality are maintained. Finally, applicant's arguments regarding the deficiencies of '222 are not persuasive and the rejections are maintained.